

Act, as amended. The article was labeled in part: (Cans) "Cold Storage Hanford Produce Co. Sioux City, Iowa. W. L. Ogden & Co. * * * Eggs."

Adulteration of the article was alleged in the libel for the reason that it consisted wholly or in part of a filthy, decomposed, and putrid animal substance.

Misbranding was alleged for the reason that the article was [food] in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package in terms of weight and measure.

On March 1, 1923, W. L. Ogden and Co., claimant, having admitted the material allegations of the libel and consented to the entry of a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,000, in conformity with section 10 of the act, conditioned in part that the said product be sorted under the supervision of this department, the bad portion destroyed by the United States marshal and the good portion released to the said claimant.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

11329. Adulteration of shell eggs. U. S. v. 500 Cases, et al., of Eggs. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 17278. I. S. Nos. 2639-v, 2640-v, 2641-v, 2642-v. S. No. E-4306.)

On February 12, 1923, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 159 cases and 477 cases, more or less, of eggs, remaining in the original unbroken packages at Philadelphia, Pa., or vicinity, consigned by the Merchants Refrigerating Co., Jersey City, N. J., alleging that the article had been shipped from Jersey City, N. J., on or about January 9, 1923, and transported from the State of New Jersey into the State of Pennsylvania, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Bell-Jones Company, Cold Storage * * * Merchants Ref. Co. N. J.-Cold Storage."

Adulteration of the article was alleged in the libel for the reason that a substance, to wit, ammonia, had been mixed and packed with the said article so as to reduce and lower and injuriously affect its quality. Adulteration was alleged for the further reason that the article consisted in whole or in part of a filthy, decomposed, and putrid animal substance.

On February 28, 1923, the Thomas F. Piper Co., Philadelphia, Pa., having entered an appearance as claimant for the property, a decree of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of \$1,000, in conformity with section 10 of the act, conditioned in part that the said eggs be broken and denatured with coal oil.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

11330. Alleged adulteration of shell eggs. U. S. v. Charles J. Blazek (Blazek & Novotny). Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 12368. I. S. No. 18781-r.)

On July 1, 1920, the United States attorney for the District of North Dakota, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Charles J. Blazek, trading as Blazek & Novotny, Pisek, N. Dak., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about July 19, 1919, from the State of North Dakota into the State of Minnesota, of a quantity of shell eggs which were adulterated.

Examination by the Bureau of Chemistry of this department of 540 eggs from the consignment showed that 47, or 8.7 per cent of those examined, were inedible eggs, consisting of black rots, mixed or white rots, and heavy blood rings.

Adulteration of the article was alleged in the information for the reason that it consisted in whole or in part of a filthy, putrid, and decomposed animal substance.

On January 15, 1923, the case came on for trial before the court and a jury. After the submission of evidence and arguments by counsel the court delivered the following instructions to the jury (Miller, J.):

"Gentlemen of the jury: You have now heard all the evidence in the case and the views held and entertained by counsel with reference to the evidence

introduced. The case is now ready to go to you, gentlemen of the jury, for your final consideration. If the court has at any time shown any anxiety with reference to the progress of the trial in this case, it has been because the court felt that it might possibly have been shortened up some in the trial, not because the court did not consider the case of any importance. It is an important case because Congress has seen fit to enact a law with reference to pure food. The plain purpose and intention of that law is to protect everyone from being compelled to buy or having imposed upon them impure food, and it is the duty of the prosecuting attorneys for the Government to see that that law, as well as all other laws, are enforced; so that it is important from the standpoint of the Government, whose duty it is to protect the people against impure foods, to enforce that law. It is also an important case from the standpoint of the defendant. The defendant stands charged here with having violated that law, violated a law of the United States, and that in itself is a mighty important thing to the defendant, and by that charge he is not only charged with having violated the law of his own Government but is also charged necessarily with unbusinesslike and unfair and unjust practices, so that it is a case that, so far as importance is concerned, well merits your careful consideration.

"The law that the defendant is charged with violating is commonly known as the Pure Food and Drug Act, passed by Congress on June 30, 1906, and that part of the law that is applicable to this case is as follows:

"That the introduction into any State or Territory or the District of Columbia, from any other State or Territory or the District of Columbia, or from any foreign country, or shipment to any foreign country, of any article of food or drugs which is adulterated within the meaning of this act,' which is as follows: If it consists in whole or in part of any filthy, decomposed, or putrid animal or vegetable substance so as to be unfit for food.

"The information is as follows:

"Philip Elliott, assistant attorney for the United States in and for the District of North Dakota, who for the said United States in this behalf prosecutes, in his own proper person comes into court on this 28th day of June, A. D., nineteen hundred and twenty, and with leave of court first had and obtained, gives the court here to understand and be informed as follows, to wit:

"That Charles J. Blazek, trading as Blazek & Novotny, at Pisek, State of North Dakota, did within the Northwestern Division of the Judicial District of North Dakota and within the jurisdiction of this court, on or about the nineteenth day of July, in the year nineteen hundred and nineteen, then and there in violation of the act of Congress of June 30, 1906, known as the Food and Drugs Act (34 Statutes at Large, 768), unlawfully ship and deliver for shipment from Pisek, State of North Dakota, to the city of Duluth, State of Minnesota, consigned to Levine Bros. Co., a certain consignment, to wit, a number of cases, each case containing an article of food marked and branded as follows, to wit: "Order of Blazek & Novotny, Pisek, N. Dak." Said article was billed as eggs.

"That said article of food when shipped and delivered for shipment as aforesaid was then and there adulterated within the meaning of the said act of Congress in that it consisted in whole or in part of a filthy, putrid, and decomposed animal substance; all of which was and is contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

"Wherefore said attorney, in behalf of the United States, prays the consideration of the court here in the premises and that due process of law may be awarded against the defendant, in this behalf, to make answer to the United States touching and concerning the premises aforesaid.' (Sworn to by Philip Elliott.)

"Now, of course, you, gentlemen of the jury, will understand that the fact that this defendant was informed against by the United States district attorney as read to you and that pursuant to that information he has been arrested and brought to trial here is not any evidence of his guilt. It is merely the manner and form by which the Government brings to trial a defendant charged with an offense against the laws of the United States; and you are also told that every presumption of law is with the defendant, the presumption being that he is innocent of the crime charged until the Government has proven him guilty of the offense charged beyond a reasonable doubt. That presumption of innocence remains with the defendant during the trial of the case up to the time, if that time comes, when you, gentlemen of the jury, are satisfied beyond a reasonable doubt of his guilt. When that time comes, if it does come, the presumption no longer remains with him.

"Before the Government can ask a conviction of the defendant at your hands, the Government must prove beyond a reasonable doubt each and every material allegation in the information, and you are told that the material allegations in this information, which the Government must prove beyond a reasonable doubt before it can ask a conviction at your hands, are three. The first one is that these particular eight cases of eggs were in fact, at or about the time and place mentioned in the information, delivered for shipment or shipped by this defendant. The second one is that they were delivered for shipment or shipped by him in interstate commerce, that is to say, from one State into another State of the United States; and the third material allegation is that the eggs at the time they were shipped by the defendant, if they were shipped by him, were adulterated within the meaning of this act, and you are told as a matter of law that if at the time they were shipped by the defendant, if they were shipped by him, they were decomposed to such an extent that they were unfit for food. then they are adulterated within the meaning of this act. With reference to the first material allegation mentioned, namely, that you must find beyond a reasonable doubt that the defendant in fact did ship the eight cases of eggs mentioned in the information, the defendant himself on the stand testified that he did ship these eggs and that they were billed and shipped to Levine, at Duluth, in the State of Minnesota. If that is true, then he did ship the eggs, and they were shipped in interstate commerce. I don't think on those two material allegations you will have any trouble. So that brings the remaining material allegation in that information, which the Government must prove beyond a reasonable doubt, to one single fact, namely--at the time the defendant shipped these eggs, were those eggs at that time decomposed to such an extent that they were unfit for food--and that is the only question. You are told that it isn't necessary under this act that the defendant should know at the time he shipped them that they were decomposed to such an extent as to be unfit for food. Under this law he is supposed to know and in law is held to know whether or not the eggs were in fact adulterated, as I have described. So the question, as I said, narrows down to the single proposition--were the eggs at the time of shipment decomposed within the meaning of that act, as I have described to you? That is to be determined by you from all the evidence introduced in this case and all the surrounding circumstances that have been described to you and that come before you, and before you can convict this defendant of the crime charged in this information you must find beyond a reasonable doubt that at the time that he shipped those eggs and delivered them for shipment that they were rotten and decomposed to such an extent that they were unfit for food.

"It has been testified in this case and this court has permitted it to be shown by the Government that some twelve days later when the Government's representatives examined and candled certain eggs in Duluth, said to be a part of these particular eight cases, that the particular eggs examined by the Government were at that time decomposed. Now you are told that the only purpose for which that testimony was admitted and the only reason it is competent at all is to permit you to say what bearing that fact, if it was a fact, may have on the question whether they were decomposed at the time they were shipped. In other words, the fact that they were decomposed and adulterated within the meaning of the act twelve days later would not make the defendant guilty. It was admitted for the purpose to let you say what evidence such facts were as bearing on the question whether twelve days before when he shipped them they were decomposed and adulterated within the meaning of the act, and the one further purpose whether or not, and that is for you to say, the particular eggs examined by the Government's agent on the 31st day of July at Duluth were in fact eggs shipped by this defendant, and unless you find that the particular eggs examined by the Government at Duluth on the 31st day of July were the identical eggs, that is among and were the identical eggs shipped by this defendant, then, of course, there is no evidence in this case whatever to show that the eggs shipped by defendant were decomposed within the meaning of the act. So with such instructions on that part of the case I think you have the issues squarely submitted to you.

"Now, I have said that you must find these facts beyond a reasonable doubt, and reasonable doubt is not a mere fanciful or capricious notion that a juror might get from some particular piece of evidence that is introduced. It means an honest doubt from all of the evidence introduced in the case and one that is founded in reason itself--a substantial question must arise in your mind whether or not the defendant is guilty. It is such a doubt that would in the more important affairs of your own life cause you to stop and hesitate and say

that you were not certain which was right. If, on the whole evidence in this case, such a question and doubt has arisen in your mind as to whether or not the eggs at the time they were shipped and delivered for shipment by the defendant were in fact decomposed and adulterated within the meaning of the act, or if there is such a doubt in your mind with reference to whether the eggs as examined by the Government's agents in Duluth on the 31st day of July were the same eggs that were shipped by this defendant, then you have a reasonable doubt and you should acquit this defendant. If, on the other hand, after fully considering all of the facts and the circumstances in this case, you can say to yourself that you are morally certain, that you have an abiding faith, that these eggs shipped by the defendant on the 19th day of July, 1919, were at that time decomposed and rotten to the extent that they were unfit for use, then you are convinced beyond a reasonable doubt and your verdict should be guilty.

"You are the sole judges of the credibility of the witnesses and the weight that should be given their testimony, and in weighing the testimony you should adopt such reasonable tests and standards with reference to the witnesses and the weight to be given their evidence as reasonable, prudent men would use in searching for truth with reference to their own affairs in life. You have a right, of course, to take into consideration the appearance of a witness, what he testified to, his means of knowledge, apparent candor or lack of candor, and all other circumstances that impress you as being worthy of consideration.

"The defendant himself is a competent witness in his own behalf, he has testified in this case, and you should weigh his evidence and apply to his testimony the same rules and standards which you do to other witnesses, bearing in mind, of course, that he is the defendant and has some interest in the case, and if you should find and believe from the evidence that any witness has sworn falsely you may disregard his entire testimony or such parts of it as is not corroborated by other creditable evidence or circumstances surrounding the case that give credibility to it.

"Now, gentlemen, I have prepared two forms of verdict in this case: One is 'We, the jury, find the defendant guilty' and the other is 'We, the jury, find the defendant not guilty.'

"Are there any exceptions?"

The jury thereupon retired, and after due deliberation returned a verdict of not guilty.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

11331. Misbranding of Egyptian regulator tea. U. S. v. 8 Dozen Packages of Egyptian Regulator Tea. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 14456. I. S. No. 4771-t. S. No. C-2801.)

On or about February 15, 1921, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 8 dozen packages of Egyptian regulator tea, remaining in the original packages at Fort Worth, Tex., alleging that the article had been shipped by the McCullough Drug Co., Lawrenceburg, Ind., on or about November 29, 1920, and transported from the State of Indiana into the State of Texas, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part: (Circular) "Egyptian Regulator Tea * * * A Speedy and Positive relief for * * * Dyspepsia, Liver Complaint, Sick Headache, Nervousness * * * Nature's Own Gift To Dyspeptic, Debilitated Men, to Worn-out. Nervous Women, to Mothers of Peevish and Sickly Children, to Girls Just Budding into Womanhood, to Sufferers from Defective Nutrition and Blood Diseases, to Corpulent People, whether Male or Female, Old or Young * * * Rheumatism, Neuralgia, Sick Headache, Pains in all parts of the body, Running Sores, Pimples, Boils Carbuncles and Skin Diseases * * * Lung Trouble and Consumption. Premature Old Age, Lack of Youthful Energy, Beauty and Vigor, Sallow Complexion and Haggard, Careworn Look * * * diabetes * * * Malaria * * * killing the Disease Germs * * * Heart Troubles, Paralysis, Rheumatism, Gout * * * apoplexy;" (wrapper) "Egyptian Regulator Tea A Remedy For * * * Dyspepsia, Sick Headache, and all Disorders of the Stomach. Its daily use will Purify the Blood, Remove all Blotches from the Face, and Restore the Complexion. Ladies will find this a valuable remedy for all Female Complaints. Also for Liver and Kidney trouble."